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*Attorneys for Plaintiff Philip Morris USA Inc.*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

PHILIP MORRIS USA INC.,

Plaintiff,

v.

A & V MINIMARKET, INC., a New York corporation doing business as A & V MINI MARKET, *et al.*,

Defendants.

No. 07 Civ. 8359 (LAK)(GWG)

**REQUEST FOR CERTIFICATE OF DEFAULT**

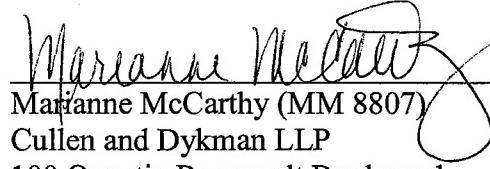
TO THE CLERK OF THE COURT:

Pursuant to Rule 55(a) of the Federal Rules of Civil Procedure and Local Civil Rule 55.1, Plaintiff Philip Morris USA Inc. hereby requests that you enter default in this action against Defendant Inkona News Stand, Inc., a New York corporation doing business as Ink On A, Ink On A, Inc. and Inkona Inc. ("Inkona"). Default should be entered because INKONA has not answered or responded to the Complaint within the time prescribed by Rule 12 of the Federal

Rules of Civil Procedure or otherwise appeared in this action. The facts justifying the entry of default are set forth in the attached Affidavit of Marianne McCarthy in Support of Request for Certificate of Default, and a proposed Clerk's Certificate of Default is also attached hereto.

Dated: June 2, 2008

CULLEN AND DYKMAN LLP

  
\_\_\_\_\_  
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v.

A & V MINIMARKET, INC., a New York corporation doing business as A & V MINI MARKET, *et al.*,

Defendants.

No. 07 Civ. 8359 (LAK)(GWG)

**AFFIDAVIT OF MARIANNE McCARTHY**  
**IN SUPPORT OF REQUEST FOR CERTIFICATE OF DEFAULT**

STATE OF NEW YORK )  
                            )  
                            ss.:  
COUNTY OF NASSAU     )

MARIANNE McCARTHY, being duly sworn, deposes and says:

1. I am a member of the Bar of this Court and am Of Counsel to the law firm of

Cullen and Dykman LLP, co-counsel to Heller Ehrman LLP, attorneys for Plaintiff Philip Morris

USA Inc. I am fully familiar with the facts and circumstances surrounding this action. I make this declaration in support of Philip Morris USA Inc.'s request for a Certificate of Default against Defendant Inkona News Stand, Inc., a New York corporation doing business as Ink On A, INK On A, Inc. and Inkona Inc. ("Inkona"), pursuant to Fed. R. Civ. P. 55(a) and Local Civil Rule 55.1.

2. Upon information and belief, Inkona is not an infant, in the military, or an incompetent person.

3. Philip Morris USA Inc. commenced this action on September 26, 2007 by the filing of the Summons and Complaint. A true and correct copy of the Summons and Complaint (without exhibits) is annexed hereto as Exhibit A.

4. In accordance with Fed. R. Civ. P. 4(h)(1), Philip Morris USA Inc. effected service of process on Inkona by serving a copy of the Summons and Complaint on Muhit Rahman, a manager and authorized agent of Inkona, on October 2, 2007, at the business address of 66 Avenue A, New York, New York 10009. These facts are set forth in the Affidavit of Service of Bethel Debnam, sworn to October 3, 2007, a true and correct copy of which is annexed hereto as Exhibit B.

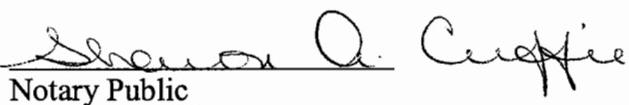
5. Under Fed. R. Civ. P. 12(a)(1)(A), Inkona was required to answer or respond to the Complaint no later than October 22, 2007.

6. Inkona has not answered the Complaint or otherwise defended the action, and the time for Inkona to do so has expired.

WHEREFORE, on behalf of Philip Morris USA Inc., I respectfully request a Certificate of Default against Inkona.

  
MARIANNE MCCARTHY

Sworn to before me this  
2<sup>nd</sup> day of June, 2008.

  
Notary Public

Sharon A. Cuffie  
Notary Public, State of New York  
No. 01CU6020584  
Qualified in Suffolk County  
Commission Expires March 01, 2011